

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DENISE MARIE THOMAS,

Plaintiff,

NO. CV-10-0073-LRS

vs.

ORDER OF DISMISSAL

UNITED STATES,

Defendant.

The pro se plaintiff, Denise Marie Thomas, filed this pro se complaint on March 22, 2010 (Ct. Rec. 1). Plaintiff's request for *in forma pauperis* was denied on March 23, 2010 (Ct. Rec. 3). Plaintiff filed an identical complaint on April 1, 2010 (Ct. Rec. 6). On May 7, 2010, the Court screened Plaintiff's Complaint for legal and factual sufficiency. In conducting this review, Plaintiff's pro se pleadings were liberally construed and given the benefit of any doubt as required.

¹⁰ See *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

The Complaint fails to comply with Federal Rule of Civil Procedure 8(a). Fed.R.Civ.P. 8(a) requires a complaint to contain a short and plain statement of the grounds upon which the court's jurisdiction depends, a short and plain statement of the claim showing the pleader is entitled to relief, and a demand for judgment for the relief the pleader

1 seeks. Rule 8(e)(1) requires averment of a pleading be simple, concise
2 and direct.

3 The Complaint seeks monetary relief (2 million dollars for non-
4 economic damages and 18 million dollars for punitive damages) from a
5 defendant who is immune from such relief. A complaint should be
6 dismissed if it: (1) is frivolous or malicious; (2) fails to state a
7 claim upon which relief can be granted; or (3) seeks monetary relief
8 from a defendant who is immune from such relief. A complaint is
9 frivolous if it has no arguable basis in fact or law. *O'Loughlin v. Doe*,
10 920 F.2d 614, 617 (9th Cir.1990) (internal quotation marks and citation
11 omitted). Plaintiff does not plead sufficient facts which would suggest
12 a basis for jurisdiction in this court.

13 As part of her suit, Plaintiff seeks an award of monetary damages
14 from the United States based on civil rights allegations, illegal
15 eavesdropping/wiretapping allegations and local law enforcement
16 encounters allegedly based on "criminal harassment and racial
17 profiling." At this juncture, however, it appears her claims against
18 this defendant are barred by the doctrine of sovereign immunity and that
19 her complaint fails to state a claim against the United States upon
20 which relief can be granted. The federal government and its agencies
21 are immune from suit absent a waiver of sovereign immunity. See e.g.,
22 *FDIC v. Meyer*, 510 U.S. 471, 475, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994)
23 ("It is axiomatic that the United States may not be sued without its
24 consent and that the existence of consent is a prerequisite for
25 jurisdiction") (citation omitted); *Keesee v. Orr*, 816 F.2d 545, 547
26 (10th Cir.1987); *Portsmouth Redevelopment & Hous. Auth. v. Pierce*, 706
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1 F.2d 471, 473-74 (4th Cir.1983). The doctrine of sovereign immunity
2 ordinarily bars direct constitutional actions against federal agencies
3 as well as constitutional tort actions against federal agencies. See
4 *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403
5 U.S. 388 (1999)).

6 Plaintiff also lists several state law claims in her Complaint
7 This Court has no jurisdiction over state law claims in the absence of
8 proper federal jurisdiction. Further, Plaintiff lists § 1983 as another
9 statute supporting her claims. "To sustain an action under section
10 1983, a plaintiff must show (1) that the conduct complained of was
11 committed by a person acting under color of state law; and (2) that the
12 conduct deprived the plaintiff of a federal constitutional or statutory
13 right." *Hydrick v. Hunter*, 466 F.3d 676, 689 (9th Cir.2006) (quoting *Wood*
14 *v. Ostrander*, 879 F.2d 583, 587 (9th Cir.1989)). No state actors are
15 named as defendants.

16 Plaintiff also lists the Federal Tort Claims Act ("FTCA") as another
17 statute supporting her claims. A claim is actionable under 28 U.S.C. §
18 1346(b) if it alleges all six elements required by the FTCA and the suit
19 is filed after proper administrative notice. Plaintiff has not
20 sufficiently stated a factually cognizable claim for relief against the
21 United States under the FTCA. The Court hereby dismisses Plaintiff's
22 action without prejudice.

23 **IT IS HEREBY ORDERED:** Plaintiff's Complaint is **DISMISSED** without
24 prejudice.
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1 **IT IS SO ORDERED.** The District Court Executive is directed to
2 enter this Order, judgment and forward a copy to plaintiff.

3 DATED this 10th day of May, 2010.

s/Lonny R. Suko

LONNY R. SUKO
CHIEF UNITED STATES DISTRICT JUDGE